IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

Crl.Rev.Pet.No. 543 of 2000()

CRA.316/1996 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.141/1995 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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REVN. PETITIONER/APPELLANT/ACCUSED NO.1:

VARGHESE, S/o. PAILY,
KANJIRATHUMOOTTIL VEEDU,
VALAYANCHIRANGARA KARA,
RAYAMANGALAM VILLAGE.

BY ADV. SMT.AYSHA YOUSEFF
SRI.T.K.MOHAMMED SHARAFUDHEERN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NOS. 3032 OF 2000 AND 2960 OF 2001 IN CRL.R.P.NO.543 OF 2000

DISMISSED

27.02.2007 Sd/- K.R.UDAYABHANU,JUDGE

TRUE COPY

P.A.TO JUDGE

K.R.UDAYABHANU,J

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Crl.R.P.No.543 OF 2000

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Dated this the 27th day of February, 2007

ORDER

The revision petitioner stands convicted for the offence under Section 411 I.P.C. and sentenced to undergo rigorous imprisonment for one year. The prosecution case is that the revision petitioner received the stolen property with the knowledge that the same is stolen. The evidence in support consists of recovery under Section 27 of the Evidence Act, ie, of two gold bangles on the basis of confession statement of A4, the revision petitioner. PW4 is an independent witness to the recovery. The contention of the revision petitioner is that the police officials were enraged on account of the fact that A4 had filed complaint before the Judicial First Class Magistrate Court, Perumbavoor, alleging illegal detention of his son, who is the first accused, and also on account of the fact that the wife of A4 had filed habeas corpus petition before the High Court. The High Court had in the above proceedings ordered a magisterial enquiry in to the alleged illegal detention of first accused as well as A4. It is the case of the revision petitioner that after A4 filed complaint before the magistrate, he was taken in to illegal custody and thereafter the habeas corpus petition was filed and subsequently A4 was made an accused and the recovery was effected. It is also pointed out that

PW4 is an interested witness as one of the the thefts had taken place in the house of the brother of PW4. PW4 has admitted the same in the cross- examination. It is the case of the revision petitioner that his son who is the first accused was involved in the alleged theft and that A4 has been inducted as an accused only on account of the ill-will of the police officials and subsequent to the filing of the petition by him before the Judicial First Class Magistrate Court and the filing of habeas corpus petition by the wife of the revision petitioner/A4. I find that the evidence of PW4 as such cannot be believed. PW4 has stated that the first accused ie, Saju and A4 were present along with police when the recovery was affected. It was found that A1 committed the theft. PW10, the Circle Inspector of Police who conducted the investigation and PW11, the Additional Sub Inspector have admitted the fact of complaint filed by revision petitioner and the filing habeas corpus petition by the wife of A4. The part of the alleged confession statement also not seen properly marked. I find that the above circumstances, and the interestness of the independent witness ie, PW4 casts serious doubt as to the involvement of the A4, the revision petitioner. It cannot be held that the prosecution has proved beyond reasonable doubt the charge against A4. In the circumstances the revision petition is allowed. A4 the revision petitioner would stand acquitted.

K.R.UDAYABHANU,JUDGE

dvs